OECA and Regional Report

Week Ending June 24, 2019

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- **Administrative Complaint Issued Alleging Clean Water Act Wetlands Violations by David D'Amato of Anchorage, Alaska**

Office of Compliance

Regular Highlights:

Enforcement and Compliance Assurance Issues

ICIS Business Object Reports Training

On July 13, 2010, Region 6 hosted advanced reports training for ICIS users. There were 28 participants from 9 states and 9 regions in attendance. Staff demonstrated how to create an Ad-Hoc report with multiple queries and reports and also demonstrated several formatting features, including a Crosstab with totals from each one of the individual queries. Staff provided a step-by-step handout so users could follow along easily during the training and each user would be able to build the report on their own. Contact: Emery Harriston, 202-564-2497; Edward Voisin, 202-564-1621; Catherine Bius, 214-665-6456.

Introduction to the ICIS Data Element Dictionary (ICIS DED)

The Integrated Compliance Information System (ICIS) team held a webinar to introduce users to the newly released ICIS Data Element Dictionary (ICIS DED) Report. The webinar presentation described the contents of the DED, the layout and navigation of the report, and how to locate and run the report. For more information about the DED, or help with accessing the DED, please contact the ICIS Helpline at 202-564-7756 or icis@epa.gov. Contact: Anthony Galati, 202-564-2299.

NPDES Electronic Rule Reporting Rule (Public Meeting)

On July 13, 2010, the Office of Compliance hosted a very successful public meeting at EPA Headquarters regarding the development of the NPDES Electronic Reporting Rule. OECA's Deputy Assistant Administrator Matt Bogoshian, OWM's Deputy Office Director Randy Hill, and OEI's Office Director Lisa Schlosser each presented opening remarks at this meeting. OC management and staff then presented information regarding the rule development, followed by an opportunity for questions and comments from the states and stakeholders. Approximately 100 people participated in this public meeting, either in-person or via webinar. This public meeting will be followed by a series of weekly webinars with states and stakeholders; these webinars will focus on a particular EPA Region each week.

This multi-office rulemaking effort, chaired by OC, intends to develop a proposed regulation that will identify the essential National Pollutant Discharge Elimination System (NPDES) information that EPA needs to receive electronically, primarily from NPDES permittees, with some data required from NPDES agencies (NPDES-authorized states, territories and tribes) to manage the national NPDES permitting and enforcement program. Through this regulation, EPA seeks to ensure that facility-specific information would be readily available, accurate, timely and nationally consistent for the facilities that are regulated by the NPDES program. Contact: Andrew Hudock, 202-564-6032.

Office of Federal Activities

Regular Highlights:

Enforcement and Compliance Assurance Issues

OFA Coordination of OECA briefing of Combined Multi-Country Delegations
OFA coordinated OECA presentations to two combined delegations consisting of more than twenty persons from different countries on enforcement issues of interest. OFA's briefing provided an overview of EPA's regulatory and enforcement mechanism including (1) the maintenance of a separate operational presence (OECA) to ensure timely and effective enforcement after the approval of state environmental programs, (2) the development of EPA's criminal investigative program to punish the worst violators and promote deterrence, and (3) the calculation of administrative civil penalties. In addition, OC made a presentation on compliance assistance and NETI discussed the administrative enforcement process. Contact: Dick Emory, 202-564-7138.

Alternative Arrangements for USCG Emergency Temporary Interim Rule (ETIR) to Facilitate Response to the Spill of National Significance (SONS) from the Macondo Well in the Gulf of Mexico
OFA participated with USCG and CEQ in developing steps towards an alternative arrangement for achieving NEPA compliance for this rule. These alternative arrangements, which take the place of an Environmental Impact Statement, provide that DHS and USCG will consider the potential for significant impacts to the human environment as they implement the ETIR and shift additional response resources (primarily equipment such as skimmers and boom) from around the country to the Gulf of Mexico to assist in the cleanup of the SONS. The ETIR was developed because an adequate number of available U.S. oil spill response vessels capable of skimming oil could not be employed in a timely manner to recover the oil released from the Deepwater Horizon oil spill. The immediate issuance and implementation of the ETIR was needed to address the ongoing environmental and public health emergency posed by the SONS and to minimize the potential for environmental damage in those areas that will have fewer response resources available as those resources are deployed to the Gulf of Mexico as quickly as possible. Contact: Candi Schaedle, 202-564-6121.

Nationally Significant Letter Reviews
The comment letter on the draft EIS for the Keystone XL Pipeline will go through the "Nationally Significant" EIS Comment Letter Review process. That comment letter is due on 7/16/10. We are working with Region 9 on an adverse 3 rating on a BLM draft EIS for a mining project. The comment letter on this draft EIS is now due 7/21/2010. Contact: Robert Hargrove, 202-564-7157.

EIS and Section 309 Review Synopsis

Pursuant to a 1978 Memorandum of Agreement between the Council on Environmental Quality (CEQ) and EPA, OFA is responsible for the receipt and filing of all Federal agency EISs. In accordance with CEQ's regulations, OFA publishes in the *Federal Register (FR)* a weekly Notice of Availability (NOA) of EISs received the preceding week. During the week of July 5-9, ten EISs were filed. In accordance with Section 309(a) of the Clean Air Act, EPA is required to make public its comments on EISs issued by other Federal agencies. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments which includes a brief summary of EPA's comment letters in the Federal Register. Since February 2008, EPA has been including its comment letters on EISs on its website at: http://www.epa.gov/compliance/nepa/eisdata.html. Contact: Pearl Young, 202-564-1399; Dawn Roberts, 202-564-7146.

Region 1

Regular Highlights:

Enforcement and Compliance Assurance Issues

EPA Reaches Settlement with the Town of Canton, MA for Violations of the Small MS4 Storm Water Permit

EPA has reached settlement with the Town of Canton, Massachusetts, relating to the Town's violation of the Small Municipal Separate Storm Sewer System (MS4) general permit. The settlement provides that the Town will pay a cash penalty of $5,000 and implement a Supplemental Environmental Project (SEP). Under the SEP, the Town will install 6,302 square feet of porous pavement on an access driveway and parking area at the Town's newly constructed water treatment plant. The $31,350 SEP will benefit the environment by reducing pollutant transport through infiltration and promoting groundwater discharge. This case is part of a comprehensive initiative to promote compliance with the Small MS4 Permit and the Permit's requirements to find and eliminate illicit discharges in particular. Through this initiative, the Region hopes to promote compliance with the more rigorous IDDE requirements of the new small MS4 permits that the Region will likely issue this year. Contact: Kathleen Woodward, 617-918-1780; Andrew Spejewski, 617-918-1014.

Region I Files Consent Agreement and Final Order Resolving CWA Action Against Draper Energy Co., Inc. and Energy North Incorporated for Oil Spill to Souhegan River

On July 12, 2010, Region I filed a Consent Agreement and Final Order resolving an administrative complaint against Draper Energy Co., Inc. of Wilton, New Hampshire and Energy North Incorporated of Tewksbury, Massachusetts alleging that they violated Section 311 of the Clean Water Act and the Oil Pollution Prevention regulations at 40 C.F.R. Part 112. Specifically, the Complaint alleged that the company failed to fully maintain and implement a Spill Prevention Control and Countermeasure (SPCC) plan under the Clean Water Act at its Milford, NH facility and illegally discharged oil into waters of the United States in violation of the Clean Water Act. On or about March 5, 2009, diesel oil was discharged from a break in a pipe at the Milford, NH facility, a gas station. About 1,500 gallons of that oil flowed into the soil beneath the pump, into a granite culvert that runs beneath the facility and then discharged into the nearby Souhegan River, which flows into to the Merrimack River and eventually the Atlantic Ocean. The parties will pay a fine of $49,000 for their violations. Contact: Randy Rice, 617-918-1212; Andrea Simpson, 617-918-1738.

Region I Records Superfund Lien at Navy Yard Mills Superfund Site, Dracut, MA

On July 8, 2010, Region I recorded a lien under CERCLA § 107(*l*) on property in Dracut, Massachusetts that constitutes the Navy Yard Mills Superfund Site. The property contains renovated mill buildings, some of which are leased to commercial tenants. EPA plans to conduct a removal action at the site to eliminate contamination in soil that is migrating into groundwater, surface water and indoor air. The owner of the property requested a meeting before a neutral

EPA official to contest the propriety of the lien. EPA's neutral official rejected the owner's objections and recommended that the lien be recorded. This decision was adopted by the Region on June 8, 2010. The lien secures EPA's unpaid past costs of $85,000 and also secures EPA's claim for costs to be incurred in the removal. Contact: Wesley Kelman, 617-918-1540; Tina Hennessy, 617-918-1216; Catherine Young, 617-918-1217.

EPA Provides Global Positioning System Technology Training

Region I continued implementation of Global Positioning System (GPS) technology training to New Hampshire and Massachusetts municipalities operating Municipal Separate Storm Sewer Systems. Once trained, municipalities can use GPS technology to collect data to produce maps of their wastewater and stormwater infrastructure system components and develop an electronic asset management system using software such as the EPA-supported TEAMS program. The free on-site program has been conducted for the Winnipesaukee River Basin and the towns of Laconia and Greenland, New Hampshire, and for Tewksbury, Massachusetts. Training will continue through mid-August. Contact: Deborah Cohen, 617-918-1145.

Region 2

Regular Highlights:

Enforcement and Compliance Assurance Issues

Puerto Rico Metropolitan Bus Authority Consent Decree Lodged by USDOJ in Puerto Rico District Court

On July 9, 2010, the US Department of Justice lodged the Complaint and Consent Decree in the case *United States of America v. Puerto Rico Metropolitan Bus Authority,* in the U.S. District Court for the District of Puerto Rico. The Consent Decree resolves violations under RCRA and its implementing regulations concerning the management of hazardous waste at the Metropolitan Bus Authority's (MBA) Central Facility, as well as violations of an Administrative Consent Agreement and Final Order entered into between MBA and EPA on July 8, 2007. The CD requires the Defendant to pay $1,200,000 plus a sum for interest to settle the stipulated penalties that had accrued as a result of its noncompliance with the requirements of the CA/FO. In addition, the CD provides for injunctive relief that includes: MBA's certification that its Central Facility is in compliance with the relevant RCRA hazardous waste regulations; procedures to ensure its long-term compliance with RCRA; RCRA Operations and Maintenance requirements; RCRA Permitting, Reporting and Retention Requirements and Adoption of RCRA Compliance Procedures; the development and implementation of a RCRA Training Program at the Facility; and an independent third-party audit of all operations at the Central Facility to identify areas of non-compliance with all applicable federal, state and local environmental requirements and the requirements of the Consent Decree. Contact: Lourdes del Carmen Rodriguez, 787-977-5819; Angel Salgado, 787-977-5854.

Two Consent Decrees Entered Recouping Response Costs for the Pioneer Smelting Superfund Site

On July 12, 2010, the U.S. District Court of New Jersey entered two separate Consent Decrees settling actions against a generator and two former operators to recover response costs under Section 107 of CERCLA regarding the Pioneer Smelting Superfund Site. EPA conducted a removal action there between July 2003 and January 2005. The first consent decree, an ability-to-pay settlement, resolves an EPA cost recovery action against two former operators of the Site, Frank J. Romano, Jr. and Paul P. Romano. Frank Romano was the principal of Pioneer Smelting Company, Inc., and both Romanos served as officers of the company. They lack the resources to meaningfully reimburse EPA for its costs of response. The consent decree will require Paul Romano to pay a total of $12,000 in three installments. Frank Romano, who has no ability to reimburse EPA, will not make a cash payment, but he will be jointly and severally liable for any amount that Paul Romano fails to pay. The second consent decree, which also is an ability-to-pay settlement, resolves the CERCLA liability of a generator, Precious Metals Recycling, Inc. The decree requires the company to pay $70,000, and it also requires a second payment of up to $80,000, payable according to a formula based on Precious Metals' financial results during the

final three quarters of 2009. EPA is currently reviewing the company's 2009 financial information to determine the amount to be paid.

In late 2009 and early 2010, the court entered two consent decrees settling CERCLA cost recovery actions against eight other Pioneer Site generators. With entry of the Romano and Precious Metal Consent Decrees, EPA has recovered a total of $1,032,000 of its costs for the Site. Contact: Michael J. van Itallie, 212-637-3151; Deborah Mellott, 212-637-3147.

Region 2 Seeks Penalty Against Davand Aviation D/B/A/ Frankfort Highland Airport for Violation of the RCRA Underground Storage Tank Requirements

On June 30, 2010, Region 2 issued an administrative complaint to Davand Aviation, Inc. (Davand), citing federal underground storage tank (UST) violations involving a 6,000-gallon fiberglass reinforced plastic tank with steel suction piping that was installed at its airport (Facility) on December 1, 1986. The tank is used to store 100 octane low-lead aviation fuels. Specifically, EPA alleged that Davand failed to upgrade by providing spill and overfill prevention equipment, as required by 40 C.F.R. Sections 280.21(c) and (d). Davand failed to comply with the upgrade requirements, performance standards or the closure requirements in violation of 40 C.F.R. Part 280. EPA also alleged that Davand failed to provide a method of release detection that can detect a release from any portion of the UST system, as required by 40 C.F.R. Part 280 Subpart D. The complaint proposes to assess a penalty of $83,564 pursuant to Section 9006(d)(2) of RCRA. The complaint also contains a Compliance Order requiring Davand to comply, to the extent it has not already done so, with all applicable upgrade and release detection requirements. Davand informed EPA that it had upgraded the UST system at the Facility shortly after the inspection of the Facility. Contact: Beverly Kolenberg, 212-637-3167; Rebecca Jamison, 212-637-3948.

Lodging of Consent Decree in United States of America, Alabama Department of Environmental Management and the State of Iowa v. McWane, Inc.

On July 14, 2010, the Consent Decree in this case was lodged in US District Court in Birmingham, Alabama. McWane, Inc., a national cast iron pipe manufacturer headquartered in Birmingham, Ala., has agreed to pay $4 million to resolve more than 400 violations of federal and state environmental laws. The settlement covers 28 of McWane's manufacturing facilities in 14 states and also requires the company to perform seven supplemental environmental projects valued at $9.1 million. The litigation team required that all the alleged violations be corrected during the settlement negotiations, so the Consent Decree imposes only limited injunctive relief to help ensure future compliance. The company has certified completed corrective actions costing in excess of $7.6 million. Included in the facilities with violations is the Kennedy Valve Company located in Elmira, New York. The violations at this facility included various industrial storm water violations under the Clean Water Act. To address systemic non-compliance relating to the CWA stormwater requirements, McWane revised its EMS, rewrote its corporate-wide guidance, and implemented updated facility-specific operating procedures relating to stormwater management and control, and has committed to revising each facility-specific Stormwater Pollution Prevention Plan (SWPPP). As part of its revised corporate-wide SWPPP

improvements, McWane has agreed to a sampling and monitoring regime that exceeds federally mandated compliance requirements.

One of the SEPs the company has agreed to conduct (costing $90,250) is located in Region 2 and involves stream rehabilitation projects in the Chemung Sub-basin near the headwaters of tributaries to the Chemung River. Working with the Upper Susquehanna River Coalition, McWane has identified five projects where it would fence off certain riparian areas to eliminate biological loading along the streambank and to prevent those streams from being accessed by cows and other grazing animals. Contact: Kim Kramer, 212-637-3238.

Region 2 Issued Two Notices of Determination

On July 6, 2010, Region 2 issued two Notices of Determination (NODs) to facilities included in the New York State Office of Mental Health. The first one issued to Central New York Psychiatric Center was in response to a disclosure dated December 17, 2009. Failure to comply with CAA, EPCRA 312, TSCA, RCRA and CWA requirements was disclosed. The disclosure qualified for coverage under the Audit Policy for 100% mitigation of gravity-based penalties. Economic benefit was insignificant. Environmental benefits resulting from this disclosure include proper management of 15,800 gallons of oils and one pound of hazardous waste, proper reporting of chemicals, notification and recordkeeping.

The second NOD was issued to the Mohawk Valley Psychiatric Center in response to a disclosure dated January 28, 2010. Failure to comply with CWA and RCRA requirements was disclosed. The disclosure qualified for coverage under the Audit Policy for 100% mitigation of gravity-based penalties. Economic benefit was insignificant. Environmental benefits resulting from this disclosure include proper management of 112,453 gallons of oils and 13,783 pounds of hazardous waste, proper labeling, planning and training. Contact: Diane Fiorito, 212-637-4047; Patrick Harvey, 212-637-3267.

Region 3

Regular Highlights:

Enforcement and Compliance Assurance Issues

Regional Counsel Signs Touhy Determination Declining EPA Testimony

On June 22, 2010, Mr. Daniel F. Schranghamer, Esq., counsel for Mr. Frank T. Perano, issued subpoenas commanding testimony of EPA Region III employees Chris Menen and Andrew Seligman. The subpoenas commanded testimony of the EPA employees in *Commonwealth of Pennsylvania, Department of Environmental Protection v. Frank T. Perano*, EHB Docket No. 2010-016-CP, on behalf of Respondent before the Environmental Hearing Board, on July 13, 2010, at 1:00p.m. The matter involved an appeal of the Pennsylvania Department of Environmental Protection's (PADEP) Order seeking civil penalties for alleged violations of Mr. Perano's National Pollutant Discharge Elimination System (NPDES) permit at the Cedar Manor Mobile Home Park in Londonderry Township, Dauphin County. EPA was not a party in the matter.

In accordance with 40 C.F.R. Part 2, Subpart C, which governs testimony of EPA employees in civil litigation to which EPA is not a party, EPA employees may testify in response to a subpoena or request only if EPA determines that such testimony would clearly be in the interests of EPA. In the case of the request for testimony of an EPA employee, authority to determine whether such testimony is clearly in EPA's interest is given to the EPA General Counsel or his designee by 40 C.F.R. § 2.404. This responsibility has been delegated to the Regional Counsels of EPA. If it is determined by a Regional Counsel that the testimony of an EPA employee is not clearly in EPA's interest, then the employee is prohibited from testifying.

In the matter captioned above, Regional Counsel, following consultation with the RA, issued a Determination stating that it was not in the Agency's interest to provide testimony in the matter. The subpoenas were subsequently withdrawn by Mr. Schranghamer. Contact: Russell Swan, 215-814-5387.

EPA Region III Issues Administrative Order to Comply to Mehadrin Kosher Poultry, LLC and Nassau Properties, LLC Regarding Clean Air Act General Duty Clause [Docket No. CAA-03-2010-0341DA]

On July 14, 2010, EPA Region III issued an Administrative Order to Mehadrin Kosher Poultry, LLC, and Nassau Properties, LLC, the operator and owner, respectively, of a kosher poultry manufacturing facility located at 110 Lincoln Road in Birdsboro, Pennsylvania. EPA's Order, issued pursuant to Section 113(a)(3)(B) of the CAA, requires the Facility to comply with the General Duty Clause requirements of Section 112(r)(1) of the CAA by assessing the physical integrity of the anhydrous ammonia refrigeration system, submit an incident report for an April 2010 release and correct violations noted during EPA's inspection of the facility. Contact: Cynthia Weiss, 215-814-2659; Mike Welsh, 215-814-3285.

CBF Files Suit Against Severstal and Arcelormittal Relating to Sparrows Point Site
On July 7, 2010, CBF, The Baltimore Waterkeeper and several named individuals filed a complaint against Severstal Sparrows Point and Arcelormittal alleging violations of RCRA, CWA and corresponding state statutes. In the Relief Requested section of the complaint, CBF asked for permanent injunctions with respect to various conditions and actions related to past and ongoing activities at the Sparrows Point Facility. CBF has also requested the imposition of civil penalties.

CBF issued a NOI in June of 2009 in which CBF identified both EPA and MDE as potential defendants. Up until the filing of the complaint, the agencies remained on notice that they may have also been named on the complaint. Contact: Susan Hodges, 215-814-2643; Charles Howland, 215-814-2645.

Court Grants EPA Motion for Confidential Business Information Protective Order in United States v. Chromatex, Inc., et al, Civil Case No. 91-1501
On July 6, 2010, the U.S. District Court for the Middle District of Pennsylvania granted a Motion filed by the United States for a Confidential Business Information (CBI) Protective Order. The United States filed the Motion on May 11, 2010, seeking to protect CBI contained in cost documentation EPA wished to produce in support of bills issued by EPA in connection with the Valmont TCE Superfund Site (Site). EPA had issued bills to defendants pursuant to a 1994 Judgment entered by the Court in which the Court held that defendants were liable under CERCLA for payment of Site response costs incurred by the United States. When EPA sought to provide defendants with underlying cost documentation (much of which contained CBI) in support of these bills, however, as required by the Judgment, defendants refused to enter into a Confidentiality Agreement with EPA and refused to concur in seeking a court-ordered CBI Protective Order. In a thoughtful 28-page decision, the Court applied factors enumerated by the Third Circuit Court of Appeals in Pansy v. Borough of Stroudsburg, 23 F.3d 772 (3d Cir. 1994), to determine that a CBI protective order was warranted. The Court noted that the government established good cause for the issuance of a protective order, as disclosure of the CBI at issue would work both a clearly defined and a serious injury on EPA contractors. Contact: Joan Johnson, 215-814-2619.

Region 3 Executes Combined Complaint and Consent Agreement with General Dynamics Ordnance and Tactical Systems, Inc. Resolving RCRA Subtitle C Regulatory Violations and Imposing $38,500 Penalty [Docket No. RCRA-03-2010-0326]
On July 12, 2010, the Regional Judicial Officer ratified a combined Complaint and Consent Agreement between EPA Region III and General Dynamics Ordnance and Tactical Systems, Inc. (GD-OT" or Company) in settlement of RCRA Subtitle C regulatory violations at the Company's military ordnance projectile, housing and parts manufacturing plant located at 200 E. High Street, Red Lion, Pennsylvania 17356-0127 (hereinafter, Facility). During the course of a September 9, 2009 compliance evaluation inspection of the Facility, EPA identified violations of RCRA Subtitle C and of the federally-authorized Commonwealth of Pennsylvania Hazardous Waste Regulations. Such violations included the operation of a hazardous waste storage facility

without a permit or interim status; failure to make hazardous waste determinations; failing to submit an Exception Report when the Facility did not receive a fully signed manifest from the designated disposal facility; storing hazardous waste in containers that were not kept closed during storage; failing to perform required weekly container storage area inspections; failing to minimize the possibility of any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents; and storing universal waste lamps in containers that were not closed and which were not labeled or marked in accordance with the applicable regulation. GD-OTS cooperated fully with EPA during the course of the investigation and has certified that the Facility now is in compliance with all relevant provisions of RCRA. The settlement requires the Company to pay a $38,500.00 civil penalty for the identified violations. Contact: A.J. D'Angelo, 215-814-2480; Martin Matlin, 215-814-5789.

Region Signs Cost Recovery Consent Decree for $1.9 Million Cost Recovery at the Kim-Stan Landfill Superfund Site in Alleghany County, Virginia

The Region has signed a consent decree resolving claims for reimbursement of Superfund costs incurred in connection with the Kim-Stan Landfill Site near Selma, Alleghany County, Virginia. Under the proposed Consent Decree, Hercules Incorporated; Honeywell International, Inc.; MeadWestvaco Corporation; and MeadWestvaco Virginia Corporation (collectively Settlors) will pay the sum of $1.9 million to the United States in return for a Site-wide covenant not to sue. This covenant does *not* include the "new information/new conditions" reopener routinely provided where settlors obtain a release for future liability.

The Site contains an abandoned landfill that received waste from approximately 1972 through 1988. Poor landfilling practices led to environmental problems and involvement by the Commonwealth of Virginia, which through legal actions effectively closed the landfill in 1990. Despite actions taken by the Commonwealth in 1990-1993 to address environmental problems caused by the landfill, a large volume of contaminated leachate continued to discharge from the Site. EPA subsequently assessed the Site and, in 1999, added the Site to the National Priorities List. In September 2002, EPA issued a Record of Decision selecting remedial action for implementation at the Site. The selected remedy will reduce, to acceptable levels, risks to human health and the environment presented by the Site by covering the landfill to prevent or minimize the production of landfill leachate; collecting, removing, and treating landfill leachate at an off-Site treatment plant; and implementing controls to prevent use of contaminated groundwater. EPA has completed construction of the remedial action and will soon transfer responsibility for the Site to the Commonwealth of Virginia (which will perform O&M in accordance with a State Superfund Contract).

The Settlors arranged for the disposal of hazardous substances at the landfill. The settlement took over two years to negotiate and involved two requests for prior written approval from the Office of Site Remediation Enforcement (one to settle below 50% of past and future costs, the other to exclude the "new information/new conditions" reopener under "extraordinary circumstances"). The total value of this case is estimated at approximately $14.5 million; the

United States' recovery in this case is approximately 13%. Contact: Andrew S. Goldman, 215-814-2487; Anthony Iacobone, 215-814-5237.

Ship Management Corporation in Panama Agrees to Pay $4 Million in Criminal Penalty for Concealing Deliberate Vessel Pollution into the Ocean

Irika Shipping S.A., a ship management corporation registered in Panama and doing business in Greece, pled guilty on July 8, 2010, before Maryland U.S. District Court Judge Frederick J. Motz, to felony obstruction of justice charges and a violation of the Act to Prevent Pollution from Ships (APPS) for concealing deliberate vessel pollution from the *M/V Iorana*. The *Iorona*, a Greek flagged cargo ship, made port calls in Baltimore, Maryland; Tacoma, Washington; and New Orleans, Louisiana.

In the multi-district plea agreement brought in the District of Maryland, the Western District of Washington, and the Eastern District of Louisiana, Irika Shipping agreed to pay a $4 million fine, serve a maximum period of five years probation, and implement an Environmental Compliance Program. The fine includes a $3 million criminal fine and $1 million in organizational community service payments that will fund various marine environmental projects. In Maryland, $750,000 will go to the congressionally established National Fish & Wildlife Foundation and be used for Chesapeake Bay projects. In Washington, $125,000 will go to environmental projects in and around the waters of Puget Sound and the Straits of Juan De Fuca. In Louisiana, $125,000 will go toward funding habitat conservation, protection, restoration, and management projects to benefit fish and wildlife resources and habitats.

A criminal investigation was initiated in January 2010 after a crew member passed a note to the Customs and Border Protection inspector upon the ship's arrival in Baltimore alleging that the ship's chief engineer had directed the dumping of waste oil overboard through a bypass hose that circumvented pollution prevention equipment required by law. The whistleblower's note stated: "We are asking help to any authorities concerned about this, because we must protect our environment and our marine lives."

During a January 8, 2010 inspection of the vessel, the Coast Guard obtained photographs taken on the whistleblower crew member's cell phone showing the use of a 103-foot long "magic hose" to bypass the ship's oily water separator. The illicit bypass system used to discharge oily waste, including sludge, was routed through the ship's boiler blow down system where any trace of oil could be expected to be steam cleaned away. The illegal discharges were concealed in a fraudulent oil record book, a required log in which all overboard discharges are to be recorded.

In 2007, Irika Shipping was also the operator of the *M/V Irika*, a ship subject to a similar prosecution in Tacoma, Washington, where the ship's owner, Irika Maritime S.A., and the ship's chief engineer were convicted. As part of the sentence in that case, both Irika Maritime and Irika Shipping were required to develop and implement an Environmental Compliance Plan that would apply during a four year period of probation to the entire fleet of vessels managed by Irika Shipping, including new vessels such as the *M/V Iorana*.

EPA's Criminal Investigation Division was one of the investigative agencies involved, along with the U.S. Coast Guard Investigative Service, with assistance from the U.S. Customs and Border Protection. The cases were prosecuted by the Environmental Crimes Section of the U.S. Department of Justice, the U.S. Attorney's Offices in Baltimore, Seattle and New Orleans and EPA Region III RCEC David Lastra. Contact: David Lastra, 703-793-8542.

Region 4

Regular Highlights:

Enforcement and Compliance Assurance Issues

Complaint and Consent Decree Lodged in Clean Air Act MACT case on July 7, 2010
The Complaint and Consent Decree were filed against Wise Alloys, LLC (Wise), located in Muscle Shoals, Alabama for violations of the Clean Air Act, Secondary Aluminum Maximum Achievable Control Technology (RRR MACT) 42 U.S.C. § 7412, 40 C.F.R. 63., Subpart RRR, on July 7, 2010 in the Northern District of Alabama. EPA identified several violations of the RRR MACT during a September 2004 inspection. The Consent Decree requires Wise to pay a $270,000, civil penalty and to come into compliance with the RRR MACT. The Alabama Department of Environmental Management (ADEM) joined this action and will file a separate complaint. ADEM will receive one half of the civil penalty. Contact: Ellen Rouch, 404-562-9575; Rosalyn Hughes, 404-562-9206.

Region 4 Files Consent Agreement and Final Order (CAFO) with American Cold Storage-North American, L.P. to Resolve Alleged Violations of Section 103 of CERCLA and Section 304 of EPCRA
A CAFO was filed on July 2, 2010, to resolve alleged violations of CERCLA § 103 and EPCRA § 304 with American Cold Storage-North America, L.P., at its facility in Louisville, Kentucky. The violations were the result of Respondent's failure to notify the National Response Center, the State Emergency Response Commission, and the Local Emergency Planning Commission of a release of ammonia in an amount greater than the reportable quantity. To resolve this matter, the Respondent agreed to pay a total civil penalty of $57,650. Contact: Jennifer Lewis, 404-562-9518; Vinson Poole, 404-562-9186.

Region 5

Regular Highlights:

Enforcement and Compliance Assurance Issues

United States Files Complaint and Simultaneously Lodges Consent Decree Resolving Violations of Multiple Environmental Statutes by McWane, Inc. at 28 Facilities in 14 States

On July 14, 2010, the United States filed a complaint and simultaneously lodged a consent decree resolving over 400 violations of the Clean Air Act (CAA), the Clean Water Act, the Resource Conservation and Recovery Act (RCRA), the reporting requirements of the Comprehensive Environmental Response, Compensation and Liability Act, the Emergency Planning and Community Right-to-Know Act, the Safe Drinking Water Act and the Toxic Substances Control Act by McWane, Inc. in the U.S. District Court for the Northern District of Alabama. The proposed consent decree resolves violations at 28 facilities owned and operated by McWane in 14 states and includes injunctive relief, a civil penalty of $4 million and seven supplemental environmental projects (SEPs) on which McWane will expend no less than $9.1 million.

Four of the 28 facilities addressed in the consent decree are in Region 5 including Clow Water Systems in Coshocton, Ohio and three Manchester Tank & Equipment Company facilities located in Quincy, Illinois, Bedford, Indiana and Elkhart, Indiana. Region 5's share of the cash penalty is $1,009,793. In addition, two of the SEPs will be performed in Region 5 at an estimated cost of $3,590,000. The SEPs include conversion of a wet spray paint booth to dry coatings that will eliminate emissions of volatile organic compounds (50 tons per year) at the Manchester Tank facility in Bedford, Indiana and diesel retrofits in Coshocton, Ohio. The violations that will be resolved by the consent decree were discovered through multi-media inspections conducted at McWane facilities by the Regions and through environmental audits conducted by McWane in 2001 and 2004.

McWane corrected most of the violations prior to settlement. As a result, only a limited amount of injunctive relief is required by the Consent Decree. The cost of injunctive relief implemented by McWane at Region 5 facilities is estimated at $6,015,102 and includes, among other things, installation of a new wet cap to maintain cupola afterburner operating temperature and implementation of a RCRA closure plan for the cement-lined cooling pond at Clow Water Systems. To address the Prevention of Significant Deterioration and Title V permit violations at the cupola furnace at the Clow facility, the consent decree requires, among other things, that particulate matter emissions from the exhaust stack for the cupola furnace not exceed 0.078 lbs per ton of molten iron produced and establishes a 5-year schedule for stack tests to assess compliance with this emission limit. Particulate emissions are expected to be reduced by approximately 70 tons per year. Contact: Christine Liszewski, 312-886-4670; Sheila Desai, 312-353-4150; Michael Beedle, 312-353-7922; Carol Staniec, 312-886-1436; James Entzminger, 312-886-4062.

Complaint Filed Against Bunting Bearings, LLC, Delta, Fulton County, Ohio

On July 9, 2010, U.S. Department of Justice filed a complaint in U.S. District Court for the Northern District of Ohio, Western Division seeking the reimbursement of costs incurred by the United States in connection with the former Eagle Picher Site (Site) in Delta, Fulton County, Ohio. The Site is currently owned by Bunting Bearings, LLC doing business as Bunting Bearings Corp. In the complaint the United States seeks enforcement of an administrative order on consent, civil penalties, recovery of response costs, and a declaratory judgment stating that Bunting Bearings, LLC is liable for future response costs incurred by the United States in connection with the Site. Contact: Craig Melodia, 312-353-8870; Matt Ohl, 312-886-4442.

Clean Air Act Consent Decree Entered in U.S. v. Big River Zinc Corporation (S.D. Ill)

On June 30, 2010, the United States District Court for the Southern District of Illinois entered a Consent Decree requiring the Big River Zinc Corporation (BRZ) to comply with the Clean Air Act's New Source Performance Standards at its Sauget, Illinois zinc smelter. Under the Decree, BRZ will also pay a civil penalty of $250,000.

BRZ ceased its zinc roasting operations in 2006, alleging financial hardship. The company is still hopeful, however, that it will be able to resume these operations in the near future. In light of this uncertainty, the decree prohibits BRZ from operating its zinc smelting roasters – unless and until it installs and makes operational the requisite scrubbing technology and continuous emission monitors. If BRZ does not resume zinc roasting operations within five years of entry of the Consent Decree, it must permanently shut down the roasters.

We anticipate that the operation of the controls required by the Decree will result in a reduction of more than 2,750 tons of sulfur dioxide per year. Contact: Louise Gross, 312-886-6844.

CAA Consent Decree Lodged re: West Side Metals Corp.

On June 28, 2010, DOJ lodged a consent decree in the U.S. District Court for the Northern District of Ohio concerning West Side Metals Corp., a scrap dealer in Cleveland, Ohio (*United States v. West Side Metals Corp,* Civil Action No. 1:10-cv-01427). EPA sought penalties and injunctive relief under the Clean Air Act against West Side, alleging that West Side violated the CAA and regulations under the National Recycling and Emission Reduction Program by failing to follow the requirement to recover or verify recovery of refrigerant from appliances it accepts for disposal. The Decree provides for a civil penalty of $10,000 based upon ability to pay. The Decree also requires Defendant to (1) purchase equipment to recover refrigerant or contract for such services and provide such service at no additional cost; (2) no longer accept appliances with cut lines unless the supplier can provide appropriate verification that such appliances have not leaked; (3) require its suppliers to use the verification statement provided in Appendix A of the Decree; and (4) keep a refrigerant recovery log regarding refrigerant it has recovered. Contact: Timothy Thurlow, 312-886-6623.

Region 6

Regular Highlights:

Enforcement and Compliance Assurance Issues

CITGO Refining and Chemical Company, L.P., Corpus Christi, Nueces County, TX
A Complaint and Consent Agreement and Final Order (CAFO) was filed against CITGO Refining and Chemical Company, L.P. located in Corpus Christi, Nueces County, TX (CITGO) on July 12, 2010 to resolve violations of the Clean Air Act (CAA). On July 19, 2009O CITGO suffered an equipment failure which resulted in a fire at its East Plant #2 Alkylation Unit. The fire caused a release of approximately 561 pounds of Hydrogen Fluoride. The initial fire caused one CITGO employee to be severely injured with thermal burns. The all clear was sounded on July 28, 2009. CITGO violated Section 112(r)(1) of the CAA by failing to maintain a safe facility and taking such steps as are necessary to prevent releases, and it also violated 40 C.F.R. § 68.69(a)(3)(iv) for not having written operating procedures for the control of its hazardous chemical inventory levels. The CAFO resolves the violations of the CAA's general duty clause and the Risk Management Plan. CITGO has agreed to pay a penalty of $225,000 to settle the listed CAA violations. Contact: Jan Gerro, 214-665-2121.

Bills of Information Filed Against Co-owner, Manager of DRD Towing Company, LLC. (DRD) and DRD, Eastern District of Louisiana
On July 2, 2010, a Bill of Information was filed in the Eastern District of Louisiana charging DRD Towing, LLC (DRD), with violating one count of Title 33 U.S.C. 1223, specifically the Ports and Waterways Safety Act (PSWA) (felony); and one count of 33 U.S.C. 1319(c)(1)(A) of the Clean Water Act (CWA) (misdemeanor). A separate Bill of Information was also filed charging Randall Dantin with violating one count of 18 U.S.C. 1505, Obstruction of Justice (felony). DRD and Dantin are expected to plead guilty to these charges at arraignment.

At approximately 1:30a.m. on July 23, 2008, the *M/T Tintomara (Tintomara)*, a 600-foot Liberian-flagged tanker ship, collided with the red-flag tanker barge *DM932* (*tanker barge*) being pushed by the DRD operated *M/V Mel Oliver (Mel Oliver)* at or near the mile marker 99 of the lower Mississippi River near downtown New Orleans, Louisiana. The collision between the *Mel Oliver* and the *Tintomara* resulted in the negligent discharge of a pollutant, 282,686 gallons of Fuel Oil No. 6, from the *tanker barge*, into the Mississippi River. The Coast Guard collaborated with the United States Environmental Protection Agency Criminal Investigation Division (EPA-CID) in the investigation of the incident.

The investigation revealed that the individual who was operating the *M/V Mel Oliver* at the time of the incident was not a Licensed Captain, but possessed an Apprentice Mate Permit. It was further determined that no Licensed Captain was on the *M/V Mel Oliver* at the time of the accident. Furthermore, it was determined that DRD routinely understaffed vessels and/or staffed the vessels with either under licensed or unlicensed personnel. The investigation also revealed

that DRD has destroyed all past documents detailing the staffing of DRD employees. Contact: Thomas C. Walsh, Jr., 225-925-3423.

Former Battery Recycling Facility President Pleads Guilty to Conspiracy to Violate RCRA: United States v. Robert L. Curry, Sr., P-10-CR-229, Western District of Texas, Pecos Division.

On July 8, 2010, Robert L. Curry, Sr., former President of BRI, pleaded guilty to a one count Bill of Information charging him with conspiracy to violate the Resource Conservation and Recovery Act (RCRA) by conspiring with his previously indicted co-conspirators and others to illegally store and dispose of hazardous waste (hazardous waste batteries and the processing by-products) to avoid the costs associated with the proper and lawful storage and disposal of the waste. No sentencing date has been set.

During its operational period, between approximately August 4, 2000, and February 22, 2007, BRI was engaged in the business of recycling used batteries. The facility purchased by BRI had initially been granted a permit to store hazardous waste on September 8, 1993 and multiple corporations held the transferred permit between 1993 and 2004, including BRI which operated on the transferred permit until its permit renewal application was returned on September 9, 2004, because of continued RCRA violations and a failure to provide financial assurance. Thereafter, BRI failed to properly close the permitted facility pursuant to the Closure Plan. Additionally, an adjacent registered Universal Waste site was used by BRI to illegally store hazardous waste without a permit. Contact: Kathleen A. Kohl, 214-665-3118.

OGC Issues

The 5th Circuit Court of Appeals Denied Plaintiff/Appellant's Petition for Rehearing in the Case of *Texas Disposal Systems Landfill, Inc v. EPA*

Texas Disposal Systems Landfill, Inc. ("TDSL") petitioned EPA to withdraw its authorization of Texas's hazardous waste program. TDSL alleged that Texas was in violation of the federal Resource Conservation and Recovery Act (RCRA). EPA issued a Determination as to Whether Cause Exists to Withdraw the Texas RCRA Program (Determination) and found no cause to commence withdrawal proceedings. TDSL then filed suit in the Texas district court challenging EPA's Determination under the Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706. The district court dismissed TDSL's complaint for lack of subject-matter jurisdiction, holding that the EPA's Determination was a nonreviewable discretionary agency action. By an unpublished per curiam opinion, the 5th Circuit affirmed the district court's dismissal for lack of subject-matter jurisdiction on May 7, 2010. The court held that the decision not to commence proceedings to withdraw authorization of a state's RCRA program is a discretionary non-enforcement decision that is unreviewable under 5 U.S.C. § 701(a)(2). On July 7, 2010, the 5th Circuit denied TDSL's petition for rehearing. Contact: David Gillespie, 214-665-7467

Environmental Appeals Board Orders Region to Respond to Jurisdiction Issue

On December 9, 2009, EPA objected to the issuance of a Clean Air Act Title V Operating Permit for the Flint Hills Resources (Flint Hills) Corpus Christi (Texas) East Refinery. Pursuant to 40 C.F.R. § 70.8(c)(4), upon receiving an objection from EPA, the permitting authority (here, the Texas Commission on Environmental Quality (TCEQ)) has 90 days to revise and submit a proposed permit in response to the objection. Since TCEQ failed to act, EPA is required to issue or deny the permit. On May 25, 2010, EPA sent a letter to Flint Hills requesting a permit application. On June 25, 2010, Flint Hills a petition with the EPA Environmental Appeals Board (EAB) to appeal EPA's May 25, 2010 permit application request. On July 2, 2010, the EAB ordered R6 to respond to the petition (by July 21, 2010) solely on the issue of whether the EAB has jurisdiction to consider the matter. Contact: Josh Olszewski, 214-665-2178.

Region 7

Regular Highlights:

Enforcement and Compliance Assurance Issues

Region 7 Issues Order to MidAmerican Energy Company of Des Moines, Iowa for CAA Violations

On July 14, 2010, Region 7 issued an Administrative Compliance Order to the MidAmerican Energy Company of Des Moines, Iowa, for violations of the Acid Deposition Control Provisions of Title IV of the Clean Air Act, 42 U.S.C. §7651, and regulations promulgated thereunder at 40 C.F.R. Parts 72 and 75.

MidAmerican Energy Company (MidAmerican) is the owner and/or operator of the Phase II affected units 2 and 3 at Walter Scott Energy Center, Council Bluffs, Iowa, and the Phase I affected unit Boiler 9 at Riverside Generating Station, Bettendorf, Iowa. On or about August 19, 2009, MidAmerican voluntarily disclosed to EPA inaccurate reporting of SO2 emissions for the three subject units. MidAmerican determined that from 2000-2008, the three units under-reported SO2 emissions by a total of 478 tons due to an inaccurate wall-effect factor used by the test contractor during CEMS relative accuracy test audit procedures.

Specifically, MidAmerican failed to report and deduct Acid Rain credits as required by 40 C.F.R. §75.22(a)(2). MidAmerican also failed to use a proper test method as required by 40 C.F.R. §60 Appendix A, Method 2H, 2.2.2. Therefore, MidAmerican violated the provisions of Section 412 of the Act, 42 U.S.C. §7651k, and the implementing regulations at 40 C.F.R. Parts 72 and 75, at Walter Scott Units 2 and 3 and Riverside Boiler 9 of the MidAmerican station.

In the Compliance Order, EPA is requiring MidAmerican to permanently surrender to the EPA Enforcement Surrender Account 478 SO2 allowances as defined under the Acid Deposition Control provisions of Title IV of the CAA. Under the provisions of Title IV, each allowance permits a unit to emit, during or after a specified calendar year, one ton of sulfur dioxide. Therefore, MidAmerican's surrender of 478 allowances will result in pollutant reductions of 478 tons or 956,000 lbs of SO2.

MidAmerican did not cause environmental harm or realize an economic benefit as a result of the incorrect calculations, as MidAmerican held enough allowances for each compliance year from 2000-2008 to cover MidAmerican's reported miscalculation of allowances for said years. According to CAMD, the calculation errors were very difficult to discover. EPA would not have known about the miscalculation of allowances, but for MidAmerican's voluntary disclosure. Contact: Julie Murray, 913-551-7448.

Consent Agreement/Final Order filed in Nebraska CWA Section 309 Concentrated Animal Feeding Operation Case

On July 14, 2010, Region 7 filed a Consent Agreement/Final Order resolving violations alleged against Platte Valley Feeders, LLC, a beef feedlot in Kearney, Nebraska. The $20,000 penalty is associated with Platte Valley Feeders' violations of the CAFO's nutrient management plan (NMP), its NPDES permit and the CWA. The feedlot is an NPDES permitted animal feeding operation authorized to confine up to 14,000 head of beef cattle. An evaluation of Platte Valley's NMP and reporting revealed there was significant over-application of manure and process waste water to the facility's land application area in 2008. Facility records indicate that Platte Valley applied waste in quantities that are 15 times the agronomic rate. Contact: Dan Breedlove, 913-551-7172.

Consent Agreement/Final Order Filed in Kansas CWA Section 309 Concentrated Animal Feeding Operation Case

On July 13, 2010, Region 7 filed a Consent Agreement/Final Order resolving violations alleged against Jewell County Feeders, LLC. Jewell County Feeders operates a 4,990-head beef feedlot in Mankato, Kansas. The $10,800 penalty is associated with stockpiling manure in areas without runoff controls and subject to runoff. The facility also failed to maintain adequate storage capacity for process wastewater and failed to dispose of the waste on days suitable for land application. The feedlot is an NPDES-permitted. Contact: Dan Breedlove, 913-551-7172.

Region 7 Enters Administrative Settlement with Magellan Pipeline Company, L.P., for Failure to Perform May 2009 Facility Response Plan Drill and March 2010 Oil Spill

On July 13, 2010, Region 7 entered a Consent Agreement and Final Order (CAFO) with Magellan Pipeline Company, L.P. The CAFO resolves violations of Sections 311(b)(3) and (j) of the Clean Water Act (CWA) and 40 C.F.R. Part 112. Specifically, the CAFO requires Magellan to pay a $46,200 civil penalty to resolve violations related to a March 2010 oil spill at its pipeline terminal in Milford, Iowa, and for its failure to properly conduct a Facility Response Plan (FRP) drill during a May 2009 EPA inspection of its bulk oil storage facility near Wichita, Kansas. The CAFO also requires Magellan to certify that it has taken steps to address these violations and is now in compliance with the Clean Water Act and its regulations. This CAFO represents the first Region 7 administrative penalty settlement for FRP violations. Contact: Howard Bunch, 913-551-7879.

Region 7 Settles Violations of FIFRA with Pesticide Producer

On July 13, 2010, Region 7 entered into a Consent Agreement and Final Order (CAFO) with Brenntag Mid-South in settlement of FIFRA violations. Brenntag Mid-South is a pesticide producer and distributor located in Henderson, KY. An inspection by the Missouri Department of Agriculture on February 9, 2010, revealed that Meyer Laboratory, Inc., in Blue Springs, Missouri, with whom Brenntag Mid-South has a supplemental distributorship agreement, was holding for sale or distribution a pesticide registered to Brenntag Mid-South which lacked required language from its EPA-accepted label. This CAFO simultaneously commences and

concludes this action and requires Brenntag Mid-South to pay a penalty of $3,628.80 for the FIFRA violation addressed in the CAFO. Contact: Chris Dudding, 913-551-7524.

Region 7 Settles Violations of FIFRA with Pesticide Producer

On July 14, 2010, Region 7 entered into a Consent Agreement and Final Order (CAFO) with Meyer Laboratory, Inc. (Meyer) in settlement of FIFRA violations. Meyer is a pesticide producer and distributor located in Blue Springs, Missouri. An inspection by the Missouri Department of Agriculture on February 9, 2010, revealed that Meyer was holding for sale or distribution a pesticide which lacked required language from its EPA-accepted label. This CAFO simultaneously commences and concludes this action and requires Meyer to pay a penalty of $3,628.80 for the FIFRA violation addressed in the CAFO. Contact: Chris Dudding, 913-551-7524.

Consent Agreement and Final Order Entered in the Matter of Spirit AeroSystems, Inc., Addressing Violations of RCRA

On July 13, 2010, a Consent Agreement and Final Order (CAFO) was filed in the matter of Spirit AeroSystems, Inc. of Wichita, Kansas. Spirit manufactures fuselages, under-wing components, composites, wings and spare parts for large jet engine aircraft. Prior to June 2005, Spirit was a part of Boeing Commercial Airplanes. Spirit's facility occupies 10 million square feet of land and employs approximately 10,000 full-time employees. Spirit's facility was inspected by EPA in July 2006. The EPA inspector found that Spirit offered hazardous waste for transport without a hazardous waste manifest and failed to perform hazardous waste determinations on primer coated machine residue, IWTP sludge, and primer spillage. In addition, Spirit operated as a treatment, storage or disposal facility without a RCRA permit or RCRA Interim Status, due to an inadequate secondary containment system, failure to maintain the facility to minimize the possibility of fire, failure to close and/or date satellite accumulation and storage containers of hazardous waste, and failure to comply with contingency plan and training requirements.

EPA entered into pre-filing negotiations with Spirit in July 2009. Discussions became unproductive and EPA felt it was appropriate to file a complaint. An administrative complaint was filed in this matter on September 29, 2009. EPA subsequently amended the Complaint on December 23, 2009. EPA and Spirit were able to reach a mutually agreeable settlement during the alternative dispute resolution process. The CAFO requires Spirit AeroSystems to pay a civil penalty of $132,500. Contact: Kristen Nazar, 913-551-7450.

Region 8

Regular Highlights:

Enforcement and Compliance Assurance Issues

Region 8 Issues Amended Work Orders to ARCO

EPA Region 8 issued a comprehensive scope of work and order letter, amending existing orders to include the scope of work, to require the continued implementation of the Butte Site Record of Decision. The scope of work mandates around $6 million in ongoing design and remedial construction work, including yard cleanup, sediment cleanup, and stormwater controls by the Butte Site PRPs. Contact: Henry Elsen, 406 457-5030.

DOJ Files Complaint Against South Dakota Landowners for Clean Water Act Violations

On July 7, 2010, the Department of Justice, on behalf of EPA Region 8, filed a civil complaint against Richard Kor, Wesley Kor, and Kor Ethanol, Inc., relating to violations of Sections 301 and 311 of the Clean Water Act in White, South Dakota. The violations of Section 301 occurred between 2000 and 2002 or 2003, when the defendants discharged dredged or fill material into a tributary of North Deer Creek and its adjacent wetlands without a permit in association with the construction of a new stream channel. These unauthorized activities resulted in the filling of approximately 2.68 acres of wetlands and an undetermined length of stream channel. The violations of 311 relate to the defendants' failure to develop and implement an SPCC plan for their facility despite having had a total above-ground storage capacity of approximately 147,300 gallons of oil. The complaint also includes a count for non-compliance with an administrative order issued by Region 8 in March 2004. That order required the defendants to restore the impacted wetlands; to date, the wetlands have not been restored.

The complaint seeks penalties for the violations of Sections 301 and 311, penalties for non-compliance with EPA's administrative order, and injunctive relief consisting of complete restoration of the tributary and its adjacent wetlands, or off-site mitigation for irreversible environmental damage, as appropriate. Contact: Wendy Silver, 303-312-6637.

EPA Region 8 Settles Storm Water Case with Kiewit Building Group, Inc.

Region 8 has settled its administrative penalty action against Kiewit Building Group for violations of the Final NPDES General Permit for Storm Water Discharges for Construction Activities (Federal CGP) at a construction site in Fort Carson, Colorado. EPA filed its complaint on February 24, 2010, after an EPA inspection revealed an inadequate storm water pollution prevention plan (SWPPP), a failure to properly install, implement, and/or maintain best management practices (BMPs), and a failure to perform inspections after storm events. Under the terms of the consent agreement and final order, Kiewit will pay $20,800.00. Kiewit has also taken steps to address all of the violations of the Federal CGP identified by EPA. Contact: Wendy Silver, 303-312-6637.

Region 9

Regular Highlights:

Enforcement and Compliance Assurance Issues

EPA Region 9 Settles an Action Against Summit Builders Construction Co. for CAA Violations for $105,610 in Civil Penalties and Injunctive Relief

On July 12, 2010, the U.S. Department of Justice and EPA lodged a Consent Decree in the U.S. District Court for the District of Arizona in Phoenix, Arizona, that requires Summit Builders Construction Co. to pay a civil penalty of $105,610 to resolve liability stemming from violations of the Clean Air Act that occurred at its construction projects located in Maricopa County, Arizona. From December 2006 to August 2007, Summit committed various violations of Rule 310 of the Maricopa County Air Quality Department that has been incorporated into the state implementation plan for Arizona pursuant to Section 110 of the Clean Air Act and that controls fugitive dust from local residential and commercial construction sites. In addition to the civil penalty, Summit will perform injunctive relief for two years, including training of its employees and deployment of on-site dust control coordinators at its larger work sites. Contact: David Kim, 415-972-3882.

Region 9 Settles Highland Plating Company, Inc. RCRA Case

On July 14, 2010, Region 9 finalized a Consent Agreement and Final Order with Highland Plating for RCRA violations at its facility in Los Angeles, California. Highland is a metal finishing facility specializing in plating and anodizing services for customers primarily in aerospace, electronics, automotive, medical and goods manufacturing industries. The Respondent will pay a penalty of $7,500 for six RCRA violations. RCRA inspectors discovered the violations on October 23, 2009. Contact: Rebecca Sugerman, 415-972-3893; Jennifer Downey, 415-972-3342.

OGC Issues

Association of Irritated Residents Sues EPA in U.S. District Court to Compel Action Under Clean Air Act on San Joaquin Valley Plan for Fine Particles (PM2.5)

On July 12, 2010, the Association of Irritated Residents (AIR), represented by the Center on Race, Poverty & the Environment (CRPE), filed a complaint in the U.S. District Court for the Northern District of California, alleging that EPA has failed to carry out a nondiscretionary duty under the Clean Air Act (CAA) to act on the PM2.5 State Implementation Plan (SIP) submitted by California for the San Joaquin Valley area, which is designated as a nonattainment area for the 1997 PM2.5 standard. Association of Irritated Residents v. EPA, Case No: CV-10-3051. Plaintiffs seek, among other things, a declaration from the court that EPA is in violation of the CAA for failing to act on this SIP by the statutory deadline of December 30, 2009, and injunctions directing EPA to take action on the SIP as required by law. Contact: Jeanhee Hong, 415-972-3921.

Region 9 ORC and Permits Staff to Attend EAB Oral Argument on Russell City Energy Center Permit Appeal by Video Conference

The Environmental Appeals Board has scheduled an oral argument in Washington D.C. for July 22, 2010, to hear five parties who are petitioning for review of a Prevention of Significant Deterioration permit that was issued by the Bay Area Air Quality Management District pursuant to a delegation agreement with EPA. Although EPA is not a party to the petition proceedings, the EPA Permits Office and Office of Regional Counsel staff will connect to the EAB's court room to observe the oral argument through our video conference equipment. EPA has also agreed to allow the five petitioners and staff from the Bay Area Air Quality Management District to connect to the oral argument at our offices. Contact: Ann Lyons, 415-972-3883.

Region 10

Regular Highlights:

Enforcement and Compliance Assurance Issues

U.S. Lodges Consent Decree with City of Tacoma (Washington) Requiring Injunctive Relief, Supplemental Environmental Projects (SEPs), and Penalties for Violations of Clean Air Act Ozone-Depleting Substance Provisions

On July 14, 2010, the Department of Justice (DOJ) lodged a consent decree to resolve violations of Title VI of the Clean Air Act (CAA) by the City of Tacoma Solid Waste Management Division (Tacoma). Between 2004 and 2007, Tacoma released approximately 4,600 pounds of ozone-depleting substances while disposing of refrigerated appliances in violation of the CAA. Tacoma agreed to pay a penalty of $224,684, and to implement three supplemental environmental projects (SEPs) that will cost $299,245. The three SEPs will reduce emissions of diesel and carbon dioxide and include: (1) replacing a diesel yard tractor with a hybrid-electric yard tractor, (2) replacing a diesel trash collection truck with a hydraulic launch assist truck that captures and reuses energy generated during braking, and (3) retrofitting ten long-haul tractor trailers with diesel particulate filters. Together, the SEPs will result in annual reductions of diesel use by 1,877 gallons, particulate emissions by 282 pounds, nitrogen oxide emissions by 1,192 pounds, carbon monoxide emissions by 232 pounds, and carbon dioxide emissions by 42,176 pounds. Finally, the consent decree imposes on Tacoma certain compliance, recordkeeping, and reporting requirements to prevent similar violations from recurring, and to promptly identify and fix any that do. Contact: Alex Fidis 206-553-4710; Katie McClintock 206-553-2143)

Region 10 Files Consent Agreement and Final Order to Resolve Clean Water Act Violations at Vierstra Dairy, Twin Falls, Idaho

On July 9, 2010, Region 10 filed a Consent Agreement and Final Order in the matter of *Mike Vierstra d/b/a Vierstra Dairy*. Vierstra Dairy was observed conducting unpermitted discharges of cow manure into the Low Line Canal near Twin Falls, Idaho on at least two occasions in June 2009. Mike Vierstra will pay a penalty of $21,000. Contact: Mark Ryan, 208-378-5768; Steven Potokar, 206-553-6354.

Administrative Complaint Issued Alleging Clean Water Act Wetlands Violations by David D'Amato of Anchorage, Alaska

On July 6, 2010, Region 10 filed an Administrative Complaint against David D'Amato alleging violations of the Clean Water Act. From September 2005 through July 2008, Mr. D'Amato placed dredged and fill material into unnamed streams and wetlands at his 29-acre property in Anchorage, Alaska without obtaining a Clean Water Act Section 404 permit. The waters of the site flow through a salmon-bearing creek to Potters Marsh, which flows into Cook Inlet. Potters Marsh is a premier wildlife viewing spot with thousands of visitors annually. Sediment load to Potters Marsh is a rising concern. EPA issued a Compliance Order in 2007 requiring Mr.

D'Amato to restore the site. To date, Mr. D'Amato has not completed the requirements of the 2007 Compliance Order. Contact: Jessica Barkas, 206-553-8183; Heather Dean, 907-271-3490.

EPA Issues Stop Sale, Use or Removal Order to Camping Safety for Two Unregistered Animal Repellents

On July 8, 2010, Region 10 issued a Stop Sale, Use or Removal Order to Camping Safety (also known as King Enterprises) for selling two unregistered animal repellents. During a December 2009 inspection, Region 10 found the two products, "Dog Repellent" and "Police Magnum (OC-17) Pepper Spray Personal Protection" (Police Magnum), being offered for sale. Camping Safety was producing "Dog Repellent" and only retailing "Police Magnum." The labels of these products bore the following pesticidal claims; "Dog Repellent," "Aim at face of Dog," and "Effective Against … Vicious Animals." These products are not registered with EPA as pesticides. The company immediately stopped selling the products after the inspection; this order formalizes the requirement to stop the sale of the products. Contact: Mercer St. Peter, 206-553-0240; Chad Schulze, 206-553-0505.
